

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 134 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

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ARJUNBHAI PUNJABHAI CHUNARA

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
MR. AB VYAS, ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/02/99

ORAL JUDGEMENT

The petitioner has challenged in this writ petition the detention order dated 31.7.1998 passed by the Police Commissioner, Vadodara City under section 3(2) of the Prevention of the Antisocial Activities Act,1985 (for short 'PASA') and has prayed for quashing of the said order and his immediate release from illegal

detention.

It seems from the grounds of detention that on account of registration of five cases under sections 454, 457, 380 and 114 of IPC against the petitioner and in view of the statements of three confidential witnesses the Detaining Authority arrived at subjective satisfaction that the petitioner is dangerous person within the meaning of section 2(c) of the PASA and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

The impugned order has been challenged on two grounds. The first is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order and the second is non application of mind by the Detaining Authority to the material on record.

The second ground has absolutely no substance. It was so argued on the basis of recital in the statements of three confidential witnesses that they have confirmed the facts in para 2 of the grounds of detention. This recital may be absurd mistake on the part of the Detaining Authority but it cannot be said that he had not applied his mind to the statements of three confidential witnesses. Even if technically formulation of grounds of detention is taken in seriatum, it can be said that after formulating the grounds in preceding para of the grounds of detention, when the Detaining Authority considered the statements of confidential witnesses the gist of those statements was incorporated in the grounds of detention. Thus, there is no merit in the contention that the order suffers from vice of non application of mind.

So far as the subjective satisfaction of the Detaining Authority that the petitioner is dangerous person is concerned, it requires no interference. Five cases punishable under Chapter XVII of the IPC were registered against the petitioner. He was thus habitual in committing theft and as such he could be adjudged as dangerous person within the meaning of section 2(c) of PASA. Three confidential witnesses also stated about the criminal activities of the petitioner. Thus, the subjective satisfaction of the Detaining Authority on this ground requires no interference.

Coming to the question whether the activities of the petitioner were prejudicial for maintenance of public

order, four cases of theft etc. registered in 1997 and one similar case in 1998, may indicate that the petitioner is habitual thief. However, from the grounds of detention it does not appear that theft was committed repeatedly in the same locality in such a manner on account of which fear, sense of danger and insecurity was created in the locality. Thefts were committed in the city area and in J.P.Road. Secret commission of theft cannot be said to have endangered maintenance of public order.

So far as the three confidential witnesses are concerned, after examining their statements disclosed in the grounds of detention it should not take much time for observing that the activities of the petitioner were primarily concerned between the petitioner and three witnesses. No member of the public was beaten or injured. In the third incident narrated by the third witness there is no indication that members of the public collected and they were chased by the petitioner. Minor clash between petitioner and the witness cannot be stretched to this limit that his activities were prejudicial for maintenance of public order. Consequently, there was no material before the Detaining Authority for coming to subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. Consequently, the impugned order of detention is rendered bad in law and therefore, it cannot be sustained. The writ petition therefore, succeeds and is hereby allowed. The impugned order of detention dated 31.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-  
(D.C.Srivastava, J)

m.m.bhatt